U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 30 2007
SRC 06 800 20123

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a chemical and lighting fixtures company. It seeks to employ the beneficiary permanently in the United States as a project manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education required for the classification sought. Specifically, the director determined that the beneficiary did not possess a foreign equivalent degree to a U.S. baccalaureate.

On appeal, the petitioner submits voluminous documentation regarding the recognition of degrees and the Indian education system as well as two new evaluations of the beneficiary's credentials. As will be discussed below, the record contains serious discrepancies regarding what education the beneficiary has completed and the equivalency of that education. Given these significant and material discrepancies, we cannot determine that the beneficiary has the necessary education.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the classification sought.[1] More specifically, as noted above, the ETA Form 9089 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available

[1] *Cf. Hoosier Care, Inc. v. Chertoff,* No. 06-3562 (7th Cir. April 11, 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought.

> at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

> (a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA or Act) (8 U.S.C. 1182(a)(5)(A)), certain aliens may not obtain immigrant visas for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Secretary of Homeland Security that:
>
> > (1) There are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; and
> >
> > (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts.

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14) [current section 212(a)(5)].[2] Id. at 423. The necessary result of these two grants of authority is that section 212(a)[(5)] determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

[2] As amended by Sec. 601, and as further amended by Sec. 172 of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. 101-649, 104 Stat. 4978; however, the changes made by Sec. 162(e)(1) were repealed by Sec. 302(e)(6) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-323, 105 Stat. 1733, effective as though that paragraph had not been enacted.

> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)[(5)]. If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the Circuit Court of Appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS,* 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

The ETA Form 9089, Part J, indicates that the highest level of education achieved by the beneficiary "relevant to the requested occupation" is a "bachelor's." In support of the petition, the petitioner submitted a "Provisional Certificate" issued by School of Correspondence Courses and Continuing Education at the University of Delhi. The certificate indicates that the beneficiary was a student there from July 1994 through April 1997, that he passed the Bachelor of Commerce Annual Examination with 506 out of 1200 marks "in the III Division." The petitioner also submitted a Master of Business Administration degree in International Business awarded to the beneficiary in March 1998 by the Maastricht School of Management and the transcript for this degree reflecting 52 credits in a one-year program.

The petitioner submitted an evaluation from [redacted] of the Foundation for International Services, Inc. dated December 10, 1999. The evaluation concludes that the beneficiary's provisional certificate from the University of Delhi "is equivalent to three years of university-level credit from an accredited college or university in the United States." [redacted] then states that he reviewed a "Provisional Certificate from the FORE School of Management in New Delhi, India certifying that [the beneficiary] qualified for the MBA Programme in the specialization of International Business Management (1997-1998 Batch) with the FORE School of Management and the Maastricht School of Management in the Netherlands and will be issued a diploma from the Maastricht School of Management." [redacted]r states that this provisional certificate is dated November 26, 1999. Mr. Spencer concludes that the two provisional certificates together are "equivalent to a bachelor's degree in international business management from an accredited college or university in the United States." The record, however, does not contain a November 1999 provisional certificate from the FORE School of Management but a March 1998 degree.

The two evaluations submitted on appeal from are [redacted] of Marquess Educational Consultants and [redacted] of Career Consulting International. [redacted] claims to be a "professor" at Marquess College of London "overseeing the standards for granting college level credit for experiential learning in all fields of study." The record contains no evidence that this college actually offers instruction, whether by correspondence or otherwise, as opposed to simply evaluating work experience toward academic credit.[3] [redacted] and [redacted] are coauthors of "Does the Value of Your Degree Depend on the Color of Your Skin?" This article, which bears no indicia of formal publication, is in the record.

We must consider what degree or diploma the beneficiary has actually earned as well as the equivalency of that credential, starting with the beneficiary's education at the University of Delhi. As stated above, the petitioner submitted only a "Provisional Certificate" as evidence of the beneficiary's three years of studies at the University of Delhi. The initial evaluation merely concluded that the provisional certificate documented only three years of academic study towards a U.S. baccalaureate. On appeal, both [redacted] and [redacted] purport to evaluate a Bachelor of Commerce degree. The record does not contain this degree. Moreover, [redacted] asserts that the beneficiary completed a total of 120 credit hours "when converted to the United States system." [redacted] purports to list all of the beneficiary's courses, the number of credits and the beneficiary's grades, also concluding that the beneficiary has 120 credit hours. The beneficiary's transcript from the University of Delhi, however, is not part of the record.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) provides that a petition seeking to classify an alien as a professional holding an advanced degree through the bachelor plus five equivalency "must" be accompanied by:

> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree and evidence on the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner did not submit the official academic record of the beneficiary's coursework at the University of Delhi or even a final degree rather than a "Provisional Certificate." The regulation at 8 C.F.R. § 103.2(b)(2) provides:

> *Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the

[3] An attempt to access the college's website connected us to the website of [redacted] Educational Consultants.

> unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner has not demonstrated that primary evidence of the beneficiary's alleged bachelor of commerce degree from the University of Delhi is unavailable or does not exist. Moreover, the petitioner has not demonstrated that secondary evidence of this degree is unavailable or does not exist. Thus, the petitioner may not rely on affidavits. Furthermore, [redacted] and [redacted] do not claim direct personal knowledge of the beneficiary's education. Thus, the assertions of [redacted] and [redacted] are insufficient evidence that the beneficiary received the degree claimed and earned the number of credits claimed.

We must now consider the equivalency of the beneficiary's Provisional Certificate from the University of Delhi. The initial evaluation concluded that the certificate documented three years of academic study equivalent to "three yeas of university-level credit from an accredited college or university in the United States." [redacted] only concluded that the beneficiary's three years of education at University of Delhi in combination with one year of study at the Maastricht School of Business could equate to a U.S. baccalaureate.

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). The Joint Explanatory Statement of the Committee of Conference provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990). At the time of enactment in 1990, it had been almost thirteen years since *Matter of Shah*. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *Lujan-Armendariz v. INS*, 222 F.3d 728, 748 (9th Cir. 2000) *citing Lorilland v. Pons*, 434 U.S. 575, 580 (1978)(Congress is presumed to be aware of administrative and judicial interpretations).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 244. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."

Thus, in order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience.

The petitioner does not attempt to distinguish *Matter of Shah*, 17 I&N Dec. at 244. Rather, the petitioner advocates for a contrary finding in this matter, without acknowledging the existence of this precedent decision. Specifically, the petitioner asserts that based on UNESCO resolutions and the credits typically required for Indian three-year degrees, such degrees should be considered foreign equivalent degrees.

On appeal, [redacted] and [redacted] both assert that the beneficiary's three years of study leading to a "Provisional Certificate" is equivalent to a four year U.S. baccalaureate. Both evaluations conclude that the beneficiary has 120 credit hours. As discussed above, that conclusion is not supported in the record. Specifically, the record lacks the beneficiary's official transcript. The evaluation from [redacted] does not explain how he determined the number of credits for each course other than equating one "contact" hour to 15 classroom hours (50 minutes).

In a letter to [redacted], President of ECE International, asserts that if three-year degrees from Israel, Canada, Britain and other European countries via the Bologna process are accepted as equivalent to U.S. baccalaureates, the Indian three-year degree should be similarly

accepted. [redacted] fails to acknowledge that the British system includes an extra year of secondary education.

[redacted] further asserts: "UNESCO clearly recommends that the 3 and 4 year Indian degree should be treated as equivalent to a bachelor's degree by all UNESCO members." She provides three website addresses in support of this assertion and subsequently quotes the following UNESCO recommendation:

> Member States should take all feasible stops within the framework of their national systems and in conformity with their constitutional, legal and regulatory provisions to encourage the competent authorities concerned to give recognition, as defined in paragraph 1(e), to qualifications in higher education that are awarded in the other Member States.

The petitioner submits 138 pages of UNESCO resolutions, only two of which are relevant. The above quote by [redacted] omits the second half of the sentence, which states: "with a view to enabling their holders to pursue further studies, training or training for research in their institutions of higher education, subject to all academic admission requirements obtaining for nationals of that State." Paragraph 1(e) defines recognition as follows:

> 'Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State an deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

The petitioner also submits the 25-page Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific although it is not clear which language the petitioner deems relevant. Inexplicably, the petitioner submits copies of this document in several languages in addition to English. The United States is not listed as a signatory to this agreement. Regardless, it does not address three-year degrees specifically. The Lisbon Convention states only that recognition of higher education qualifications is warranted "unless a substantial difference can be shown between the qualification in the Party in which recognition is sought."

[redacted] also lists British and U.S. universities that admit into graduate programs those with three-year Indian degrees. She and [redacted] assert that several U.S. universities now offer three-year bachelor programs that are "non-accelerated." The petitioner submits a New Hampshire College Graduate School report on "Re-Engineering Four Years of College into Three," proposing a three-year bachelor's program in business administration by reducing redundancies in the typical four-year program. The report does not indicate that this program has been accredited and accepted as equivalent to a U.S. baccalaureate.

As previously noted, the petitioner also submitted the article "Does the Value of Degree Depend on the Color of Your Skin?" coauthored by [redacted] and [redacted] The record contains no evidence that this article has actually been published in addition to being posted on a website. The article indicates that an Indian three-year degree "often" involves more than 1800 credit hours and that the Indian system "presupposes that general education (pre-major studies) occur at the Intermediate level." The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

> None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.
>
> In this process, we encountered a number of the objections to equivalency that have already been discussed.

[redacted] President of Educational Credential Evaluators, Inc., commented thus,

> "Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the Untied States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."
>
> * * *
>
> International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE.,
>
> "The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important

> preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor's degree.
>
> The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly form Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there's no equivalency.

[redacted] concludes:

> Although programs, degree requirements and specializations differ in various respects, it is the judgment of Career Consulting International that [the beneficiary's] international course work is *comparable* to a Bachelor of Science, representing 120 semester credit hours, with concentration in Business Administration from a Regionally Accredited Institution of Higher Education in the United States of America. Thus, for professional employment and for immigration purposes – *per 8 C.F.R. section 214.2(h)(4)(iii)(D)* – [the beneficiary] may be considered to have completed studies, which are comparable to a Bachelor of Science of Science, representing 120 semester credit hours, with concentration in Business Administration from a Regionally Accredited Institution of Higher Education in the United States

(Emphasis added.) At issue is not whether the coursework may, in some respects, be "comparable." The issue is whether the beneficiary has a degree that is a foreign equivalent degree. Significantly, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), cited by [redacted] relates to *nonimmigrants*. The provision allows for evidence of "[e]quivalence to completion of a college degree." Subparagraph (*5*) of this provision allows for the combination of education and experience. The language in this provision does *not* appear in the regulation relevant to the immigrant classification sought, 8 C.F.R. § 204.5(k), which requires a foreign equivalent degree to a U.S. baccalaureate.

The article entitled "The Three-Year Degree, the Bologna Process and U.S. Graduate Admissions," states:

> Less than a quarter (22%) of the [125] respondents reported that their institution-wide policy is to accept only four-year degrees. By contrast, the majority of institutions (64% reported accepting three-year degrees within one of three categories: equivalency determination, competency determination; and admission with provisional status. The majority of these (37% of the total) have a process for determining the "equivalency of European with American applicant' educational experience (reporting for example, that they look for 13 years of elementary plus

secondary education prior to the three-year bachelor's, hence 16 years of total pre-graduate schooling and/or that they make decisions on a "country-by-country" basis).

Thus, 59 percent of respondents (22 percent plus 37 percent) either considered only four-year degrees or three-year degrees following 13 years pre-graduate education. The report concludes that a "move in the direction of broader acceptance of the three-year degree is likely, but the application of this principle in combination with the closer evaluation of foreign credentials and individual applications in practice will become increasingly important as U.S. graduate programs work toward a consensus."

The petitioner also submits a credential evaluation from World Education Services equating a three-year degree awarded by an unknown Indian institution to a U.S. baccalaureate and an evaluation from Foreign Consultants, Inc. equating a three-year from Osmania University to a United States bachelor of science in Computer Science. These evaluations does not relate to the beneficiary's "Provisional Certificate."

The petitioner also submits a letter from the Principal of B.E.S. Sant Gadge Maharaj College asserting that the University of Mumbai requires more than 1800 contact hours, "on par" with those required at U.S. universities. The beneficiary did not attend the University of Mumbai.

The petitioner submits an Internet article from the Times of India's website asserting, based on "anecdotal evidence" that U.S. universities are starting to accept Indian three-year degrees. The only example provided, however, is an evaluation of education by World Educational Services (WES). This single example of a credential service evaluating a three-year degree as equivalent to a U.S. baccalaureate is hardly evidence that U.S universities now routinely accept these degrees for entry into advanced degree programs.

Finally, the petitioner submitted a 1997 report on Indian education by [redacted] Director of Admissions and Registrar at the University of Missouri, Kansas City. The report does not suggest that every Indian three-year degree, standing on its own, is a foreign equivalent degree to a U.S. baccalaureate. Rather, the report suggests that a three-year degree with "at least a first class honours" after graduation from a CBSE or CISCE Grade XII secondary school should be considered "comparable" to a U.S. baccalaureate. The record contains no evidence that this report from 1997 has been adopted. The record contains insufficient explanation of the CBSE or CISCE Grade XII program to accept this standard. Regardless, even if we were to accept this proposed standard, the record lacks evidence that the beneficiary's "Provisional Certificate" with a "passing" grade of 506 out of 1200 is similarly "comparable."

Significantly, while the report asserts that Indian three-year degree students attend courses Monday through Saturday year round, it still concludes in Section II that other three-year degrees should be considered for admission to U.S. graduate programs only in combination *with a postgraduate diploma*. While such a combination may be sufficient for entry into a graduate program, the regulation at 8 C.F.R. § 204.5(k) does not permit the combination of degrees towards a baccalaureate in the definition of advanced degree professional. As quoted above, "both the Act and its legislative

history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evaluations from [redacted] and [redacted] are not persuasive. That some British and U.S. universities accept the Indian three-year degree for admission to graduate programs is not decisive. It can be expected that, if the three-year degree were truly equivalent to the U.S. four-year degree, all British and U.S. universities would accept such degrees for admission to graduate programs without additional coursework requirements. The article by [redacted] and [redacted] quotes at least one expert asserting that the three-year Bologna degree is *not* accepted for entry into graduate schools.

Finally, as stated above, the evaluations from [redacted] and [redacted] are inconsistent with the evaluation of the same Provisional Certificate by [redacted] Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 795; *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Moreover, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not resolve the inconsistency between the evaluation by Dr. Edelson and the evaluations by [redacted] and [redacted]

The other credential in the record is an MBA. The record, however, contains inconsistent information about the beneficiary's education at the Maastricht School of Business. First, the petitioner only indicated that the beneficiary has a bachelor's degree on the ETA Form 9089. Moreover, the initial evaluation discusses a provisional certificate issued in 1999 confirming the beneficiary's qualification to enter an MBA program and that he *will* be issued a "diploma." It is unclear why the Maastricht School of Business would issue a provisional certificate in November 1999 advising that it was going to issue a "diploma" if it had already issued a full MBA to the beneficiary in March 1998.

As stated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, *Id.* at 591-92. Finally, doubt cast on any aspect of the petitioner's proof may, of

course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Because the petitioner has not established that the beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.